THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos. 23237 of 2004 and 1827, 2790, 2806, 2831, 7566, 7920, 14073 & 16951 OF 2005

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Dated: 24-11-2005

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Between

G. Venkata Reddy & Co., Engineers & Contractors, 406, Sri Krishna Apartments, Yousufguda, Hyderabad rep. by its Managing Partner,
G. Venkata Reddy.

Represented by its G.P.A. holder

S. Upender Reddy, S/o. S. Chinna Krishna Reddy, R/o. Flat No.C-2, G.V.R. Towers, Srinagar Colony, Hyderabad and others.

...PETITITONERS

AND

Government of Andhra Pradesh rep. by its Secretary, Irrigation & C.A.D. (P.W) Department, Secretariat Buildings, Hyderabad and others.

...RESPONDENTS

COMMMON ORDER:

The petitioners in all these writ petitions are various contractors executing different works under the Irrigation Department.

The common question raised in all these writ petitions is that the petitioners have concluded their agreements with the respondents prior to the enhancement of the Seigniorage charges pursuant to the G.O.Ms.No.217 dated 29.09.2004 in respect of the works entrusted to them. Therefore, they are not liable to pay the Seigniorage charges at the enhanced rates but they are liable to pay the Seigniorage charges as mentioned in the agreements entered into by them with the respondents. The Seigniorage charges mentioned in the agreements is based

on the G.O.Ms.No.94 dated 01.07.2003 and the earlier G.O.Ms.No.331 dated 21.06.2000.

It is stated that the petitioners have quoted the rates following the common standard schedule of rates for all Engineering Departments for the year 2003-2004, which lays down the criteria and method to be adopted while preparing the estimates relating to various works to be executed by different departments. In fact, several departmental decisions have been taken by the Chief Engineers of the various departments to include the Seigniorage charges in the estimates at the time of tender but without implementing the said decisions, collecting the enhanced Seigniorage charges pursuant to the impugned G.O. is illegal and contrary to the agreement.

It is further stated that the impugned G.O. dated 29.09.2004 cannot be effected to the contracts already entered into.

In WP.No.2790 of 2005 a specific plea is also taken stating that the action of the respondents is discriminatory in not uniformly collecting the enhanced Seigniorage charges; in respect of similarly situated contractors; in some of the works executed under the supervision of the Major Irrigation Department, the decision taken by the Board of Chief Engineers is scrupulously followed and no recoveries are being made in respect of the enhanced rates, in respect of contract relating to the work under Superintending Engineer, Nettempadu, Kalwakurthy Lift Irrigation, I & CAD, Mahaboobnagar under the Major Irrigation, Chief Engineer. It is also stated that as per the departmental correspondence and the decisions of the Chief Engineers, the enhanced Seigniorage rates by the Mines and Geology Department, during the execution of the work, have to be borne by the concerned department only but not by the contractor. Alternatively, it was also suggested that when a proposal is made to recover the enhanced rates of the Seigniorage charges from the contractor or the agency, provision has to be made in such a manner that the estimate (cost of the work) shall be revised in accordance with the enhanced rates so that there will not be any burden on the contractor or the agency and one way in which it can be done is by way of charging the enhanced rates of Seigniorage charges to the estimates.

On the other hand, the learned Government Pleader appearing for the respondents submits that all these issues have been raised in WP.No.23852 of 2004 and batch dated 23.06.2005 and were rejected by the learned Single Judge. It is stated that a learned Single Judge of

this Court following the earlier order in WP.No.23852 of 2004 and batch disposed similar WP.No.4990 of 2005. Against the said judgment W.A.No.1741 of 2005 was filed which was dismissed by order dated 19.09.2005.

I have considered the various submissions made by the learned counsel for the petitioners.

Learned counsel for the petitioners submits that their contentions have not been considered in the earlier judgments and therefore, the petitioners stand on a different footing in these batch of writ petitions. Admittedly, in all the agreements executed by the petitioners, the Seigniorage charges payable by the contractors was fixed as per G.O.Ms.No.331 dated 21.06.2000. Underneath a clause for storage of materials in the agreement, the payment of Seigniorage fee is mentioned as follows:

> "The rates are liable to be revised and amended from time to time by the Sate Government, by notification in the "Andhra Pradesh Gazette". If the revised seigniorage fee is more than the above mentioned, the recovery from the contractor's bills is as per revised rates.
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> The seigniorage charge will be recovered from contractors bills as per the rates prescribed in the contract document, for the materials used on the works only. The present practice of insisting fro production of documentary evidence for having paid the seigniorage charges in of G.O.Ms.No.243 dated 08.05.1986 and in the absence of such production of the evidence, the imposition of five times penalty is dispensed with."

The submission of the petitioners that there exists various decisions of the Chief Engineers to add the enhanced rates of Seigniorage charges to the estimates and that in the absence of adding the enhanced rates of Seigniorage charges to the estimates the contractors cannot be placed in a disadvantageous position, cannot be accepted as it is the statutory duty of the contractors to pay the Seigniorage charges as per the said G.O. None of the writ petitioners have questioned the illegality and validity of the impugned G.O. but their prayer is only that the enhanced rates of Seigniorage charges as per the impugned G.O. cannot be made applicable to them. As per the agreement entered into by the petitioners with their eyes wide open they have agreed to pay the enhanced rates of Seigniorage charges from time to time. Therefore, it is not open for the petitioners to differ with the contract obligations.

In fact, a Division Bench of this Court in **R.M.C. Constructions Ltd. v. The Engineer in Chief** (unreported judgment in W.P.No.26040 of 2001 dated 03.03.2003) held that the date on which the petitioner entered into agreement with the respondents is totally irrelevant for the purposes of levy and collection of the seigniorage fee in accordance with the rates specified under the Rules issued and amended from time to time. Following the said judgment the learned single Judge of this Court in W.P.No.23852 of 2004 and batch held that even in the absence of any such clause in the contract it is permissible for the Government to collect the enhanced rates of seigniorage charges. The Division Bench of this Court in W.A.No.1741 of 2005 rejected a similar contention of the petitioner that the department entered into contract with certain other parties, and the increased seigniorage charges were allowed to be reimbursed by orders of the Government and the petitioner is entitled for the same relief; on the ground that the rights and liabilities of the petitioner are covered by the agreement, which he entered into with respondents.

Even if the respondents have not collected the enhanced seigniorage charges from some of the contractors as alleged by the petitioners it cannot be said that the petitioners are entitled for the same treatment. If any illegality is committed by the respondents in not collecting the enhanced rates of seigniorage charges from any of the contractors it cannot become a precedent. The petitioners cannot also rely on the internal correspondence of the respondents as all the decisions of the respondents have culminated into the terms and conditions of the tender notice as well as the agreement.
Therefore, the petitioners are bound by the terms and conditions of the agreement only.

Having regard to the facts and circumstances of the case, I am of the opinion that these writ petitions are squarely covered by the aforesaid judgments of this Court. Following the same, these writ petitions are dismissed.

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V. ESWARAIAH, J

November 24, 2005

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